

# Supreme Court of the United States

DES MOINES COUNTY, IOWA  
AND STATE OF IOWA, PETITIONERS

vs.

UNITED STATES OF AMERICA, RESPONDENT

PETITION FOR REVIEW ON WRIT OF CERTIORARI TO THE  
CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF AND ARGUMENT OF PETITIONERS  
REFERENCE TO OFFICIAL REPORT

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Service of the within petition is accepted and receipt of copies  
acknowledged this \_\_\_\_\_ day of \_\_\_\_\_, 1945.

\_\_\_\_\_  
Solicitor-General of the United States.

Receipt of copies of the within Brief and Argument is acknowledged  
this \_\_\_\_\_ day of \_\_\_\_\_, 1945.

\_\_\_\_\_  
Solicitor-General of the United States.



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**PETITION FOR REVIEW ON WRIT OF CERTIORARI TO THE  
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I.

## **STATEMENT OF THE MATTER INVOLVED**

This case is a condemnation proceeding instituted by the United States Government under the authority of *Sec. 257, Title 40 U. S. C., 25 Stat. 357*; the *War Purposes Act of July 2, 1917, as amended, 50 U. S. C. Sec. 171*; the *Declaration of Taking Act of February 26, 1931, 40 U. S. C. Sec. 258a*, and the *Appropriation Act of April 5, 1941, 55 Stat. 123 (R. 2-3, 6)*. The Government had acquired by purchase and condemnation over 20,000 acres of land near Burlington, Iowa, as a site for the Iowa Ordnance Plant. On June 18, 1943, it filed its petition in condemnation, praying that the "full, fee simple title" to "all culverts, ditches, public roads and highways, except State Highway No. 16, traversing the lands described" within the boundaries of the Iowa Ordnance Plant area, "be vested in the United States of America," subject to existing easements for public utilities, for railroads, and for pipelines, (R. 4, 7). A Declaration of Taking was filed on the same date, \$1.00 being deposited as estimated compensation. Prior to the filing of the Declaration of Taking, however, the Government had actually taken possession and control of the highways, and excluded the public therefrom. It was stipulated

that the actual date of taking was March 1, 1941. (R. 114). State Highway No. 16, above mentioned, is not involved as it had been legally vacated (R. 23, 67-68). What is involved is a system of graded and gravelled highways, comprising 48.25 miles, including culverts, bridges and guard rails. (R. 169). Some of these roads have been in use since the days of Iowa as a territory. (R. 116 et seq.).

The District Court for the Southern District of Iowa, after the trial of the issue of just compensation, or damages, found as a fact: "That the full, fair, reasonable, and actual value of the roads and highways \*\*\* on the 1st day of March, 1941, (the date of taking), was the sum of \$175,000.00, which I find and award as just compensation for the taking of said roads and highways, with the bridges, culverts and improvements thereon." This award with interest resulted in a judgment for \$208,687.50 against the United States.

In the District Court all of the evidence as to the value of the property taken was offered by Petitioners herein. It was uncontroverted except for the contention of Respondent herein that it was liable only for nominal damages in the sum of \$1.00. To evidence offered by Petitioners as to the cost of providing certain alternate roads and the need for them, the District Court sustained the objections of the United States that the evidence offered was not based upon the proper measure of damages. (R. 167,300.)

Thereafter the Government perfected an appeal to the Circuit Court of Appeals for the Eighth Circuit. The Court reversed the judgment of the District Court and ordered the case remanded for new trial. The reversal was ordered on the grounds:

1. That the amount allowed by the District Court as just compensation was not shown by the evidence "to have any relation to any financial loss or out of pocket expense" which was caused by the taking, and hence, was not the true measure of damages.

2. That the true measure of damages is the cost of constructing substitute roads, if they are necessary, whether that cost be more or less than the value of the roads taken.



## II.

**BASIS FOR JURISDICTION**

Authority for the jurisdiction of this court appears in *U. S. Compiled Statutes, Sec. 1217; 28 U. S. C. A., Sec. 347.*

## III.

**THE QUESTIONS PRESENTED**

The questions presented are as follows :

1. Are petitioners entitled to recover the fair value of the roads, bridges and culverts taken?
2. Are Petitioners limited in their recovery to the cost of substitute roads if any are required?
3. Was the Circuit Court of Appeals in error in reversing the District Court judgment for error induced by Respondent?

## IV.

**REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT**

1. The Circuit Court of Appeals decided an important question of Federal Law which has not been, but should be, decided by this Honorable Court, to-wit : The measure of damages to be applied to public highways, including bridges and culverts, taken by the United States Government in condemnation proceedings.

The Petitioners respectfully state to the Court that similar cases are already in litigation or soon will be in litigation in many other jurisdictions, and that in the decisions already made by the District Courts, there has been a wide divergence of opinion as to the measure of damages to be used.

2. The Circuit Court of Appeals decided an important

question of law affecting the relative rights of the Federal Government and a sovereign state.

3. The Circuit Court of Appeals in its opinion decided an important question of Federal Law in conflict with the fundamental principles of condemnation law and constitutional provisions, to-wit: that the condemnee should be made whole for the property taken from him.

4. The Circuit Court of Appeals in its opinion invaded the sovereignty of the state. The decision would permit the taking by the Federal Government of the property of a state without the payment of compensation.

Wherefore, your petitioners pray this Honorable Court to require by writ of certiorari that this cause be certified to the Supreme Court for determination by it as provided by statute.

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